

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 17, 2003

Agenda ID #1935

TO: PARTIES OF RECORD IN APPLICATION 02-12-007

This is the draft decision of Administrative Law Judge (ALJ) Long. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ LONG** (Mailed 3/17/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of SIERRA PACIFIC POWER COMPANY for an Order Authorizing the Sale of Four Hydroelectric Generation Plants on the Truckee River to the Truckee Meadows Water Authority.

Application 02-12-007
(Filed December 5, 2002)

DENIAL OF APPLICATION WITHOUT PREJUDICE

Pursuant to Rules 17.1(a) and 17.1(b)(2) of the Commission's Rules of Practice and Procedure,¹ this decision sets forth the determination that this application is subject to the provisions of the California Environmental Quality Act of 1970² (CEQA) as an integral part of the Commission's discretionary decision-making process. Sierra Pacific Power Company (Sierra Pacific) did not file a sufficient application to allow the Commission to address the request for authority to transfer utility property. The application is denied without prejudice and Sierra Pacific may file a new application, with adequate justification, including a proponent's environmental assessment (PEA).

¹ All references to Rules are to the Commission's Rules of Practice and Procedure found in Title 20 of the California Code of Regulations.

² Public Resources Code Sections 21000 et seq.

Background

Sierra Pacific requests an exemption from the California Pub. Util. Code § 851 that governs transfers of utility property.³ Sierra Pacific proposes to sell the water rights and assets associated with four run-of-the-river hydroelectric facilities located on the Truckee River, at Farad, California, Fleish, Verdi, and Washoe, Nevada to the Truckee Meadows Water Authority (TMWA). The TMWA is a publicly owned municipal water utility that provides retail commercial and residential water services to customers in portions of the cities of Reno and Sparks, Nevada. Alternatively, Sierra Pacific seeks expedited approval of the sale under § 851.

The Commission made a preliminary finding in Resolution ALJ 176-3103, issued on December 17, 2002, that the category for this proceeding is ratesetting and determined that the matter did not require hearings. We have considered our preliminary determinations and find that a hearing is not necessary.

Discussion

As an integral part of the Commission's decision-making process, it will be necessary for Sierra Pacific to demonstrate sufficient evidence to allow the Commission to comply with CEQA. The Commission cannot make a discretionary decision to approve or deny the proposed transfer until there is a certified environmental document. Sierra Pacific must file a PEA consistent with Rule 17.1 and the requisite Information and Criteria Lists. Therefore, Sierra Pacific is directed to file a new application when it has prepared a PEA with sufficient information concerning the proposed sales transaction that will inform the Commission's decision in this matter. In addition, the new application

³ All section references are to the Public Utilities Code unless otherwise indicated.

should more fully describe and explain issues that are raised in the current application, including but not limited to:

1. A thorough description of the current laws, rules or regulations that govern the operations on the Truckee River and the operations of the four hydroelectric plants proposed for transfer. As part of that description, Sierra Pacific should explain the extent of discretion any owner of the water rights for the four hydroelectric facilities may or may not exercise in operating those facilities.
2. Submit the Orr Ditch Decree referenced in this application, and explain its current authority over the Truckee River. Explain the term of that Decree and under what conditions it would cease to operate.
3. Explain the process that has been involved in developing the Truckee River Operating Agreement (TROA) to date, (also referenced in this application) as well as future steps that will be necessary for the TROA to go into effect. Explain the purpose of the TROA with respect to water rights and operations on the Truckee River.
4. Indicate the estimated time period for completion of the CEQA/NEPA⁴ document associated with the TROA and what impact changes in the TROA prior to finalization may have on the environmental review. Indicate the estimated finalization date, if any, for the TROA and when that agreement may go into effect.
5. Explain what impact the TROA is anticipated to have on the operations of the four hydroelectric facilities and what discretion the owner will have over the facility operations.

As a result of the CEQA deficiencies the Commission has not considered the adequacy of the application to comply with § 851 and whether it is in the

⁴ National Environmental Policy Act of 1969.

public interest to find the facilities are no longer used and useful as defined in § 851. Sierra Pacific must ensure that a new application contains sufficient information to allow the Commission to determine the expected impact to ratepayers of the proposed transaction.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Douglas Long is the assigned Administrative Law Judge (ALJ) in this proceeding.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. The CEQA applies to this application and Sierra Pacific did not include a proponent's environmental assessment with the application, which is necessary for developing a certified environmental document.
2. The Commission cannot consider a discretionary action without the completion of an appropriate environmental review.
3. A hearing would be premature without a complete application.
4. This application should be denied without prejudice.

Conclusions of Law

1. This transaction is within the discretionary authority of the Commission under § 851 and § 377.1.
2. Sierra Pacific did not meet its burden to comply with CEQA.
3. This order should be effective immediately, because it will allow Sierra Pacific to promptly file a new application when it has the requisite information.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The application of Sierra Pacific Power Company (Sierra Pacific) is denied without prejudice.

2. Sierra Pacific may file a new application with an adequate proponent's environmental assessment. The new application shall include, but is not limited to, the submission of other information specified herein, that will justify the proposed transaction.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.